IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO. 593 OF 2004
IN
NOTICE OF MOTION NO. 8 OF 2004
IN
INSOLVENCY NOTICE NO.N/272 OF 2003

Hemant Damodardas Shah — Appellant
vs.
1. Ashok Thapar & ors. — Respondents

Mr.M.S.Sanghvi, senior counsel with Mr.A.Bilawala and Mr.Jayesh Vyas i/b. M/s.Bilawala & co. for the appellant.

Mr.Kishore Jain with Mr.P.V.Shah for the respondents 1 to 3.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ.

DATED : 19th October 2004

P.C.

This appeal arises out of the order dated April 20, 2004 whereby the learned insolvency Judge of this Court rejected the notice of motion taken out by the present appellant for setting aside insolvency notice.

2. Mr.M.S.Sanghvi, the learned senior counsel for the appellant-judgment debtor no.3 strenuously urged that the consent decree dated 8th December 1995 is not against the present appellant as a matter of fact since he had not signed the consent terms. He also urged that the said consent decree is nullity and not executable. The learned senior counsel would also urge that the

appellant Hemant Damodardas Shah was not the partner in the firm of M/s.Saral Enterprises but Hemant Damodar Shah (HUF) was the partner and in that view of the matter also the consent decree was not executable against the appellant.

3. We are afraid, the submissions of the learned senior counsel cannot be accepted in the proceedings for setting aside the insolvency notice. It is not in dispute that the consent decree was passed in the suit in which the present appellant was one of the defendants. The present appellant had signed the vakalatnama admittedly appointing the advocate to defend him in that suit. It is well settled that for the purposes of insolvency notice the Court must accept the decree as final and binding upon the judgment debtor. If any judgment is needed for that legal position we refer to the Division Bench judgment of this Court in the case of J.P. Tiwari v. Bhimrao Harlalka, Vol.LX 1958 Bombay Law Reporter 963.

4. We, accordingly, hold that the grounds urged by the learned senior counsel do not justify the setting aside the insolvency notice because the validity of the decree cannot be set up as a ground in such proceeding.

5. No justifiable ground is made out for interference

in the impugned order.

6. The appeal is accordingly dismissed.

(R.M. LODHA,J.)

(J.P. DEVADHAR,J.)